# Yap Kiam @ Yap Sin Tian (suing as Chairman of the United Chinese School Committees' Association Malaysia (Dong Zong), and also on behalf of other committee members except the named defendants) v Poh Chin Chuan (suing as Secretary General of United Chinese School Committees' Association Malaysia (Dong Zong)) & Ors and another appeal

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NOS W-02(NCVC)(A)-520–04 OF 2015 AND W-02(IM)(NCVC)-929–06 OF 2015
ZAWAWI SALLEH, VERNON ONG AND MARY LIM JJCA
19 SEPTEMBER 2016

*Unincorporated Associations — Meetings — Notice of extraordinary general meeting — Appellant's action in relation to notice of meeting to dissolve and re-elect central executive committee dismissed — Failure to comply with consent order, court ordered appellant to convene meeting — Appellant appealed against both decision — Extraordinary general meeting convened and central executive member re-elected, respondent sought order of dismissal — Whether judgment sought would have practical effect or result*

The appellant was the Chairman of United Chinese School Committees' Association Malaysia ('Dong Zong') whereas the respondents were members of the Central Committees ('CC') of Dong Zong, and of which eight of them were the members of the Central Executive Committee ('CEC') of Dong Zong. The appellant's action via encl 1 in respect of the meeting of the CC and the CEC to dissolve and re-elect CEC was disposed by the trial judge. The trial judge found that the proposed agenda and notice of meeting dated 6 January 2015 were valid and proper in law; and ordered the appellant to act as per terms of consent order agreed by the parties on 20 January 2015 ie to convene the meeting of CC. Due to the failure of the appellant to comply with the consent order, the respondents filed encls 33 and 45 which both were dismissed by the trial judge. In dismissing encl 45, the trial judge made further order that the appellant was to issue a notice of meeting within two days of 1 June 2015 and to convene the said meeting within 14 days of the date thereof. Being dissatisfied with the trial court's decision for encl 1 and the further order made by the trial court in encl 45, the appellant filed the present appeals. Nevertheless, it must be noted that the extraordinary general meeting of the CC and CEC of Dong Zong had been convened on 23 August 2015 ('the EGM') and the new members of CC and CEC had been elected. Based on this fact, the respondents filed encls 9a and 7a for an order of dismissal of these appeals. The issue for determination was whether the judgment sought in these

appeals would have any practical effect or result.

**Held**, allowing encls 9a and 7a; striking out the appeals; and removing the matter from the cause list:

(1) The practical effect of the EGM was that there was no longer any dispute or lis between the parties. In the EGM, the 30th CC and CEC were formed and a new chairman had been appointed with a new CC, CEC as well as office bearers. The EGM had resolved the Dong Zong leadership crisis. It is trite that where there is no longer 'living issue' between the parties, there is no 'appeal' that the court has any discretion or power to deal with. Further, there was no issue involving 'a public authority as to a question of public law' or even a question of statutory construction, but a dispute among the members of Dong Zong (see paras 29, 31–32 & 37).

**[Bahasa Malaysia summary**

Perayu adalah Pengerusi United Chinese School Committees' Association Malaysia ('Dong Zong') sementara responden-responden adalah ahli-ahli Jawatankuasa Pusat ('JP') Dong Zong, dan yang mana lapan daripada mereka adalah ahli-ahli Jawatankuasa Eksekutif Pusat ('JEP') Dong Zong. Tindakan perayu melalui lampiran 1 berkaitan mesyuarat JP dan JEP bagi menyelesaikan dan memilih semula JEP didengar oleh hakim perbicaraan. Hakim perbicaraan mendapati bahawa ajenda yang dicadangkan dan notis mesyuarat bertarikh 6 Januari 2015 adalah sah dan betul dari segi undang-undang; dan memerintah perayu untuk bertindak seperti terma-terma perintah izin yang dipersetujui oleh pihak-pihak pada 20 Januari 2015 iaitu untuk mengadakan mesyuarat JP. Akibat kegagalan perayu untuk mematuhi perintah izin, responden-responden memfailkan lampiran 33 dan 45 yang mana kedua-duanya ditolak oleh hakim perbicaraan. Dalam menolak lampiran 45, hakim perbicaraan membuat perintah selanjutnya bahawa perayu dikehendaki untuk mengeluarkan notis mesyuarat dalam masa dua hari dari 1 Jun 2015 dan untuk mengadakan mesyuarat tersebut dalam masa 14 dari tarikh tersebut. Tidak berpuas hati dengan dengan keputusan mahkamah perbicaraan bagi lampiran 1 dan perintah selanjutnya yang dibuat oleh mahkamah perbicaraan dalam lampiran 45, perayu memfailkan rayuan-rayuan ini. Walau bagaimanapun, ia mestilah diambil perhatian bahawa mesyuarat agung luar biasa JP dan JEP Dong Zong telah diadakan pada 23 Ogos 2015 ('EGM tersebut') dan ahli-ahli baru JP dan JEP telah dipilih. Berdasarkan fakta ini, responden-responden memfailkan lampiran 9a dan 7a bagi perintah penolakan rayuan-rayuan ini. Isu untuk penentuan adalah sama ada penghakiman yang dipohon dalam rayuan-rayuan ini mempunyai kesan atau keputusan praktik.

**Diputuskan**, membenarkan lampiran 9a dan 7a; membatalkan rayuan-rayuan; dan menyingkirkan perkara daripada senarai kausa:

(1) Kesan praktik EGM adalah bahawa tidak lagi terdapat apa-apa pertikaian

atau lis di antara pihak-pihak. Semasa EGM tersebut, JP dan JEP ke-30 dibentuk dan pengerusi baru telah dilantik dengan JP baru, JEP dan juga pemegang jawatan. EGM telah menyelesaikan krisis pucuk pimpinan Dong Zong. Ia adalah nyata bahawa di mana tiada lagi 'living issue' di antara pihak-pihak, tidak terdapat 'appeal' bahawa mahkamah mempunyai apa-apa budi bicara atau kuasa untuk berurusan dengannya. Selanjutnya, tidak terdapat isu yang melibatkan 'a public authority as to a question of public law' atau juga soalan pembentukan statutori, tetapi pertikaian di antara ahli-ahli Dong Zong (lihat perenggan 29, 31–32 & 37).]

**Notes**

For a case on notice of extraordinary general meeting, see 12(2) *Mallal's Digest* (5th Ed, 2015) para 3502.

**Cases referred to**

*Ahmad Saidi bin Md Isa v Timbalan Menteri Hal Ehwal & Ors* [2006] 3 MLJ 208, CA (refd)

*Ainsbury v Millington* [1987] 1 All ER 929, HL (refd)

*Borowski v Canada (AG)* [1989] 1 SCR 342, SC (refd)

*Husli @ Husly bin Mok (suing as administrator of the estate of Mok bin Tuan, deceased) v Superintendent of Lands and Surveys & Anor* [2014] 6 MLJ 766, FC (refd)

*Lim Eye Thun v Majlis Peguam Malaysia & Anor* [2010] 2 MLJ 444, CA (refd)

*Metramac Corp Sdn Bhd (formerly known as Syarikat Teratai KG Sdn Bhd) v Fawziah Holdings Sdn Bhd* [2006] 4 MLJ 113, FC (refd)

*R (Howard League for Penal Reform) v Secretary of State for the Home Department* [2003] 1 FLR 484, QBD (refd)

*R v Secretary of State for the Home Department, ex p Salem* [1999] 1 AC 450, HL (refd)

*Radio Pretoria v Chairman, Independent Communications Authority of South Africa & another* 2005 (1) SA 47 (SCA), CA (refd)

*Smith v The Queen and Attorney-General of Ontario* [2002] 1 SCR 385, SC (refd)

*Sun Life Assurance Company of Canada appellants; and Jervis respondent* [1944] AC 111, HL (refd)

**Appeal from**: Originating Summons No 24NCVC-87–01 of 2015 (High Court, Kuala Kumpur)

*Malik Imtiaz Sarwar (Frida Krishnan and Surendra Ananth with him) (The Chambers of Frida) for the appellant.*

*Justin Voon (KF Wong, HS Lim and Kho Zhen Qi with him) (KF Wong & Lee) for the respondents.*

**Zawawi Salleh JCA (delivering judgment of the court):**

INTRODUCTION

**[1]** The following two appeals, namely:

(a) Civil Appeal No W-02(NCVC)(A)-520–04 of 2015; and

(b) Civil Appeal No W-02-(IM)(NCVC)-929–06 of 2015,

were fixed to be heard together before us on 15 March 2016.

**[2]** These appeals arose out of the same suit ie Kuala Lumpur High Court Originating Summons No 24 NCVC-87–01 of 2015 ('encl 1'). By encl 1, the appellant sought certain reliefs from the High Court. On 20 March 2015, the High Court had disposed of encl 1 and granted judgment and/or order in the suit. Civil Appeal No W-02(NCVC)(A)-520–04 of 2015 is in respect of this 20 March 2015 order.

**[3]** As will be seen and described in more detail later in this judgment, consequent to the order dated 20 March 2015, the respondents filed two notices of applications ('encls 33 and 45'), in which various declaratory orders and injunctive relief were sought. On 8 April 2015, the learned judge, dismissed encl 33 while encl 45 was dismissed on 1 June 2015. On 1 June 2015, the learned judge, however, made certain consequential orders and directions.

**[4]** The appellant posited that the learned judge had erred when His Lordship made further consequential orders and directions on 1 June 2015, which in effect had substantially varied, altered and/or departed from the original order dated 20 March 2015. Civil Appeal No W-02-(IM)(NCVC)-929–06 of 2015 is in respect of this subsequent decision.

**[5]** At the outset of the hearing of these appeals, we were required to address argument on the preliminary question of whether the judgment sought in these appeals would have any practical effect or had the matter become academic.

**[6]** In this regard, the respondents filed two separate notices of motion both dated 6 November 2015 (encls 9a and 7a), seeking the following orders:

(a) Rayuan pihak Perayu di sini dibatalkan;

(b) Kos dibayar oleh pihak Perayu kepada Responden-Responden untuk ditetapkan dan/atau ditaksirkan oleh Mahkamah yang Mulia ini, dan

(c) Relif-relif lain kepada Responden-Responden yang difikirkan sesuai dan/atau adil oleh Mahkamah yang Mulia ini.

**[7]** We had, after perusing the record of appeal and hearing and considering the written and oral submissions of learned counsel for the parties, allowed the notices of motion with costs of RM10,000 for each notice of motion, subject to the payment of allocator. Deposits were refunded. It was intimated when so ordering that reasons would follow. These are those reasons.

REASONS FOR DECISION

**[8]** Courts should and ought not to decide issues of academic interest only. That much is trite. In the House of Lords' decision of *Sun Life Assurance Company of Canada appellants; and Jervis respondent* [1944] AC 111, Viscount Simon LC observed at p 113:

> ... I do not think that it would be a proper exercise of the authority which this House possesses to hear appeals if it occupies time in this case in deciding an academic question, the answer to which cannot affect the respondent in any way.

**[9]** The decision in *Sun Life* was applied by the Federal Court in *Metramac Corp Sdn Bhd (formerly known as Syarikat Teratai KG Sdn Bhd) v Fawziah Holdings Sdn Bhd* [2006] 4 MLJ 113 and the test to determine whether an appeal has been rendered academic was laid down by Augustine Paul FCJ at p 120 as follows:

> [9] The test, therefore, in deciding whether an appeal has become academic is to determine *whether there is* in existence a matter in actual controversy between the parties which will affect them in some way. *If* the answer to the question is in the affirmative the appeal cannot be said to have become academic ... (Emphasis added.)

**[10]** A similar situation arose in *Ahmad Saidi bin Md Isa v Timbalan Menteri Hal Ehwal & Ors* [2006] 3 MLJ 208 where the appellant sought for declaratory relief against a restricted residence order. When the appeal came up for hearing before this court, the restricted residence order had ended and the respondent argued that the appeal had become academic and should be dismissed. Gopal Sri Ram JCA held at p 211 para [4]:

> [4] We were entirely in agreement with learned senior federal counsel that the appeal was indeed academic. The subject matter of the appeal was the correctness of the restrictive residence made against the appellant and to which he had been subject. *That order having come to an end, there was no longer a valid lis before us for adjudication. Any views we may express about the validity or otherwise of the order would be wholly academic* in the circumstances of this case. It will simply have no effect at all. It will mean that we would act in vain. And it is settled law that a court

> will not act in vain. Equally it is also settled that the court will not grant academic declarations ... (Emphasis added.)

(See also *Husli @ Husly bin Mok (suing as administrator of the estate of Mok bin Tuan, deceased) v Superintendent of Lands and Surveys & Anor* [2014] 6 MLJ 766 at p 777 (FC)); *Lim Eye Thun v Majlis Peguam Malaysia & Anor* [2010] 2 MLJ 444 at pp 464–465 (CA)).

**[11]** In *Ainsbury v Millington* [1987] 1 All ER 929 (HL), Lord Bridge of Harwich stated:

> It has always been a fundamental feature of our judicial system that the courts decide disputes between the parties before them; they do not pronounce on abstract questions of law when there is no dispute to be resolved.

**[12]** In a similar vein, in *Radio Pretoria v Chairman, Independent Communications Authority of South Africa & another* 2005 (1) SA 47 (SCA), the Court of Appeal of South Africa stated at para 41:

> ... Courts of appeal often have to deal with congested court rolls. They do not give advice gratuitously. They decide real disputes and do not speculate or theorise (see the *Coin Security* case at para [7] (875A-D) ...).

**[13]** We may add that the courts' time and resources are finite and the efforts, therefore, should be directed principally to what are issues of practical relevance. In *R (Howard League for Penal Reform) v Secretary of State for the Home Department* [2003] 1 FLR 484, Munby J noted at para 140:

> The Administrative Court nowadays has to deal with many issues which even in the comparatively recent past would not have troubled the courts at all and which would probably have been thought by many to be simply non-justiciable. That is an entirely wholesome development. But making every allowance for this, the fact remains that the courts — including the Administrative Court — exist to resolve real problems and not disputes of merely academic significance. Judges do not sit as umpires on controversies in the Academy. Nor is the task of a judge when sitting judicially — even in the Administrative Court — to set out to write a textbook or practice manual or to give advisory opinions.

(See also *Borowski v Canada (AG)* [1989] 1 SCR 342 at pp 358–363; *Smith v The Queen and Attorney-General of Ontario* [2002] 1 SCR 385).

**[14]** The critical question, therefore, one to which we presently turn, is whether the judgment sought in these appeals would have any practical effect or result. It arises against the backdrop of the following facts.

**[15]** At the material time, the appellant/plaintiff was the Chairman of United Chinese School Committees' Association Malaysia ('Dong Zong'). All the respondents/defendants are current members the Central Committee ('CC') of Dong Zong, and of which eight of them are the current members of the Central Executive Committee ('CEC').

**[16]** There was a crisis of confidence against the leadership under the appellant/plaintiff as the Chairman of Dong Zong. This set the tune of an unfortunate saga of on-going problems in Dong Zong which resulted in the CEC becoming dysfunctional.

**[17]** The respondents/defendants as the then majority CC Members vide a requisition dated 5 January 2015, requisitioned the first respondent, in his capacity as the Secretary General of Dong Zong, to convene a CC Meeting to dissolve the CEC and re-elect the CEC Members. The first respondent then issued a notice of meeting dated 6 January 2015, containing the proposed agenda as follows:

> To discuss and accept the following Resolutions:
>
> (a) To dissolve the 29th Dong Zong Central Executive Committee; and
>
> (b) to re-elect the positions of the 29th Dong Zong Central Executive Committee Members.

**[18]** The appellant/plaintiff swiftly responded to the proposed CC meeting by filing originating summons ('encl 1') on 15 January 2015; seeking the following reliefs:

> (i) Satu perintah deklarasi bahawa Mesyuarat- mesyuarat Jawatankuasa Pusat dan/atau Jawatankuasa Eksekutif Pusat (Exco) United Chinese School Committees' Association Malaysia (Dong Zong) di bawah Kaedah 6.3.3 dan 6.4.3 Perlembagaan United Chinese School Committees' Association Malaysia (Dong Zong) hanya boleh dipanggil, dianjur dan dipengerusikan oleh Pengerusi United Chinese School Committees' Association Malaysia (Dong Zong);
>
> (ii) Satu perintah deklarasi bahawa Notis bertarikh 6 January 2015 yang dikeluarkan oleh Defendan Pertama selaku Setiausaha Agung United Chinese School Committees' Association Malaysia (Dong Zong) adalah tidak sah, ultra vires dengan Kaedah 6.3.3 dan 6.4.3 Perlembagaan Pertubuhan United Chinese School Committees' Association Malaysia (Dong Zong) dan terbatal;
>
> (iii) Satu Perintah injunksi terhadap Defendan-Defendan secara sesama dan/atau berasingan, mahupun melalui kakitangannya dan/atau ejen-ejennya dan/atau orang-orang yang berkaitan dengan Defendan-Defendan daripada mengambil sebarang tindakan berkenaan penganjuran dan/atau pengadaan dan/atau memanggil Mesyuarat

Jawatankuasa Pusat dan/atau sebarang Mesyuarat Jawatankuasa Eksekutif Pusat (Exco), termasuk sebarang mesyuarat yang berkaitan dengan Notis bertarikh 6 January 2015 yang dikeluarkan tersebut;

(iv) Satu perintah deklarasi bahawa Notis bertarikh 6 January 2015 yang dikeluarkan oleh Defendan Pertama selaku Setiausaha Agung United Chinese School Committees' Association Malaysia (Dong Zong) adalah tidak sah, kerana tidak mempamerkan alasan dan/atau agenda yang dikemukakan adalah tidak sah, dan/atau ultra vires dengan Perlembagaan Pertubuhan United Chinese School Committees' Association Malaysia (Dong Zong); dan

(v) Satu perintah deklarasi bahawa berdasarkan Perlembagaan Pertubuhan United Chinese School Committees' Association Malaysia (Dong Zong) jangkamasa perwakilan Ahli-Ahli Jawatankuasa Pusat dan Ahli-Ahli Jawatankuasa Eksekutif Pusat (Exco) yang dilantik pada 23 June 2013 dan 30 June 2014 adalah tidak kurang daripada Empat (4) Tahun.

**[19]** For reason/reasons not apparent in the appeal record, on 20 January 2015, all parties reached an understanding and agreement and narrowed the issues for determination and agreed to an interim measure which led to the recording of a consent order in the following terms:

> By consent of parties the Defendants agree not to proceed with the Central Committee meeting scheduled for 2.00 pm on 20 January 2015. It is further agreed that the question of the lawfulness and/or validity of the proposed agenda as per the notice dated 6 January 2015 issued by the 1*st* Defendant shall be decided by the court and in the event that the court were to decide that such a resolution arising from the aforesaid agenda is lawful, then the plaintiff shall convene a Central Committee meeting to discuss, deliberate and resolve the aforesaid proposed resolution as per the Notice dated 6 January 2015. The parties further agree that the members of the Central Committee and the Central Executive Committee appointed by the Plaintiff shall not be removed pending final disposal of this matter by the court.

**[20]** Enclosure 1 was heard and disposed on 20 March 2015. In essence, the learned judge found the proposed agenda and notice of meeting dated 6 January 2015 to be valid and proper in law; and that the appellant was to act as per terms of the consent order ('the 20 March 2015 Order'). The respondents alleged that this was not done. Instead, on the same day after the decision was delivered by the learned judge (ie on 20 March 2015), the appellant issued a letter dated 20 March 2015 sacking/terminating Ch'ng Chuwm Leong (the fifth respondent) and Chong Wai Yin (the third respondent) as CEC members with immediate effect and appointing Chong Cher Koi and Wong Ah Choo, respectively, as the new CEC members. The appellant appealed against the 20 March 2015 order.

**[21]** On 26 March 2015, the appellant then issued a notice of meeting dated

26 March 2015 ('the 26 March 2015 notice') for the seventh meeting of the 29th CC on 9 April 2015 to be convened, purportedly pursuant to 20 March 2015 order. However, the 26 March 2015 notice was not issued to the lawful elected CC members as at 20 March 2015.

**[22]** According to the respondents, as the appellant had failed to comply with the 20 March 2015 order properly, they then filed encl 33 and sought the following reliefs:

(a) satu pengisytiharan/deklarasi bahawa notis mesyuarat Plaintif bertarikh 26 March 2015 yang memanggilkan satu Mesyuarat Jawatankuasa Pusat 'United Chinese School Committees' Association Malaysia (kemudiannya dirujuk sebagai 'Dong Zong') yang dijadualkan untuk diadakan pada 09.04.2015, adalah tidak sah dan/atau terbatal;

(b) suatu injunksi bahawa Plaintif dan/atau semua Ahli-Ahli Jawatankuasa Pusat Dong Zong (melainkan Defendan-defendan di sini) yang diwakili Plaintif dalam prosiding di sini, melalui diri sendiri mereka dan/atau pekerja mereka dan/atau agen mereka, dilarang untuk mengambil apa juga tindakan termasuk mengadakan dan/atau mempengerusikan Mesyuarat Jawatankuasa Pusat Dong Zong yang dijadualkan untuk diadakan pada 09.04.2015 dan/atau mana-mana mesyuarat yang berkaitan dengan notis mesyuarat Plaintif bertarikh 26.03.2015;

(c) satu perintah bahawa Defendan Pertama selaku Setiausaha Agong Dong Zong hendaklah memanggil/mengadakan Mesyuarat Jawatankuasa Pusat Dong Zong dalam masa 21 hari dari tarikh perintah yang diberikan di sini dengan mengeluarkan notis wajar menurut Perlembagaan Dong Zong, kepada 32 Ahli-Ahli Jawatankuasa Pusat Dong Zong seperti mana yang disenaraikan dalam Jadual A di sini, yang mana semestinya mengandungi agenda berikut, seperti mana yang diperintahkan dalam Perintah Mahkamah bertarikh 20.03.2015 —

'Untuk membincang dan menerima Resolusi berikut:

(i) Untuk membubarkan Jawatankuasa Eksekutif Pusat ke-29 Dong Zong; dan

(ii) Untuk memilih semula jawatan-jawatan Ahli- Ahli Jawatankuasa Eksekutif Pusat ke-29 Dong Zong.';

(d) suatu perintah bahawa Defendan Kedua, selaku salah seorang Naib Pengerusi Dong Zong hendaklah mempengerusi Mesyuarat Jawatankuasa Pusat yang dipanggil oleh Defendan Pertama menurut perintah yang diberikan di sini;

(e) suatu pengisytiharan/deklarasi bahawa mesyuarat Jawatankuasa Eksekutif Pusat Dong Zong yang dipanggilkan dan dipengerusi oleh Plaintif serta yang diadakan pada 20.03.2015 adalah tidak sah dan/atau terbatal.

**[23]** On 8 April 2015, the learned High Court judge dismissed encl 33.

**[24]** The respondents then filed a further notice of application (encl 45), and sought the following reliefs: A

(a) bahawa Mesyuarat Jawatankuasa Pusat Dong Zong yang diperintahkan oleh Mahkamah Mulia ini untuk dilangsungkan dalam tempoh 21 hari dan tidak lewat dari 9/4/2015 adalah berdasarkan kepada senarai Ahli-ahli Jawatankuasa Pusat Dong Zong seramai 32 orang yang berkuatkuasa pada 20/3/2015 seperti di Lampiran 'I' seperti mana Perintah Mahkamah yang bertarikh 20/3/2015; B

(b) bahawa apa-apa pemecatan, penukaran dan/atau penggantian Ahli-Ahli Jawatankuasa Pusat Dong Zong ('JP') dan Ahli-Ahli Jawatankuasa Eksekutif Pusat Dong Zong ('JEP') oleh mana-mana pihak dan/atau selepas 20/3/2015 adalah terbatal; C

(c) bahawa apa-apa keputusan atau resolusi mesyuarat oleh mana-mana pihak yang telah dicapai atau diminitkan pada dan/atau selepas 20/3/2015 tanpa berdasarkan senarai Ahli-Ahli Jawatankuasa Pusat Dong Zong yang berkuatkuasa pada 20/3/2015 seperti di Lampiran 'I' adalah terbatal; D

(d) Mesyuarat Jawatankuasa Pusat Dong Zong yang diadakan oleh Plaintif pada tarikh 9/4/2015 dan semua mesyuarat-mesyuarat lain yang diadakan oleh Plaintif dan/atau Plaintif-plaintif lain selain Defendan-defendan pada dan/atau selepas 20/3/2015 tanpa mengikuti Perlembagaan Dong Zong termasuk kuoram yang dicatitkan dalamnya serta tanpa menggunapakai senarai Ahli-Ahli Jawatankuasa Pusat Dong Zong seperti Lampiran 'I' adalah terbatal. Selanjutnya apa-apa tindakan, resolusi dan/atau minit yang dicapai oleh mana- mana Keahlian Negeri (State Membership) di peringkat negeri berdasarkan pemecatan, penukaran dan penggantian Ahli-Ahli Jawatankuasa Pusat Dong Zong ('JP') dan Ahli-Ahli Jawatankuasa Eksekutif Pusat Don Zong ('JEP') oleh pihak Plaintif pada dan/atau selepas 20/3/2015 adalah terbatal; E F

(e) Bahawa Plaintif diperintahkan untuk mengadakan satu Mesyuarat Jawatankuasa Pusat Dong Zong dalam masa 14 hari selepas menerima Perintah ini dengan menerima-pakai senarai Ahli-Ahli Jawatankuasa Pusat Dong Zong seperti dalam Lampiran 'I' berdasarkan kuoram yang tercatit dalam Perlembagaan Dong Zong; dan jika kuoram 17 Ahli itu tidak cukup; ditangguhkan 14 hari lagi setiap kali untuk mesyuarat sama sehingga kuoram 17 Ahli dicapai di mana mesyuarat cuma mengandungi 2 agenda spesifik sahaja seperti tercatit di sini untuk membincangkan dan seterusnya membuat keputusan tentang resolusi berikut: G H

(i) untuk membubarkan Jawatankuasa Eksekutif Pusat Ke-29 'United Chinese School Committees' Association Malaysia' (kemudiannya dirujuk sebagai 'Dong Zong'); I

(ii) untuk memilih-semula jawatan-jawatan Ahli-Ahli Jawatankuasa Eksekutif Pusat ke-29 Dong Zong.

**[25]** On 1 June 2015, the learned judge dismissed encl 45 and further ordered that the appellant shall within two days of 1 June 2015 issue a notice of meeting of the CC addressed to the 25 elected CC members (excluding the seven nominated CC members) giving notice of meeting to be convened within 14 days of date thereof with only the following agenda:

To discuss and accept the following Resolutions:

(a) To dissolve the 29th Dong Zong Central Executive Committee;

(b) To re-elect the positions of the 29th Dong Zong Central Executive Committee Members.

**[26]** The learned judge further ordered that in the event the appellant fails to issue such a notice to convene the CC meeting, the first respondent as the Secretary General of Dong Zong is to issue the aforesaid notice to the 25 CC members to deliberate and resolve the motion as contained in the said notice which shall be:

To discuss and accept the following Resolutions:

(a) To dissolve the 29th Dong Zong Central Executive Committee;

(b) To re-elect the positions of the 29th Dong Zong Central Executive Committee Members.

**[27]** Thereafter, there was an Extraordinary General Meeting of Dong Zong convened on 23 August 2015 ('EGM') in which the 29th CC was dissolved and the 30th CC and CEC members were elected and, inter alia, Lau Lee Ming was elected as the Chairman of CEC.

**[28]** As of to date, the appellant is no longer the Chairman of Dong Zong and the 29th CEC and 29th CC are no longer in existence.

**[29]** We are of the opinion that the practical effect of the EGM held on 23 August 2015 is that there is no longer any dispute or lis between the parties. The 29th CEC and 29th CC are no longer in existence and have been superseded by events. In the EGM, the 30th CC and 30th CEC were formed and a new Chairman, Lau Lee Ming, has been appointed with a new CC, CEC as well as office bearers. This new line-up has been endorsed by the registrar of societies vide their letter dated 7 September 2015.

**[30]** It is also pertinent to note that the five respective state members filed a suit vide Kuala Lumpur High Court Originating Summons No 24 NCVC-1315–08 of 2015, and obtained a quia timet injunction against the appellant on 21 August 2015 in order for said EGM on 23 August 2015 to take place.

**[31]** In our view, the EGM on 23 August 2015 has resolved the Dong Zong leadership crisis. The 30th CC and 30th CEC of Dong Zong has conducted the UEC Examination in October 2015 involving approximately 25,000 students nationwide.

**[32]** It is trite that where there is no longer 'living issue' between the parties, there is no 'appeal' that this court has any discretion or power to deal with. Once there is no longer any dispute or lis between the parties, it must logically follow that nothing remains for this court to adjudicate upon or determine.

**[33]** The court will not intervene and assist the parties if the decision no longer would be of practical relevance in the case. These appeals were overtaken by events when the Extraordinary General Meeting of Dong Zong was convened on 23 August 2015 in which the 29th CC was dissolved and the 30th CC and CEC members were elected. The appellant is no longer the Chairman of Dong Zong. The matter ought to have ended there.

**[34]** Lest we be accused of an oversight, we must say that we are aware of the decision in *R v Secretary of State for the Home Department, ex p Salem* [1999] 1 AC 450 where House of Lords departed from the view that it would be an improper exercise of appellate authority to decide questions that have become academic and/or moot. Speaking for all members, Lord Slynn said:

> ... [I]n a cause where there is an issue involving a public authority as to a question of public law, your Lordships have a discretion to hear the appeal, even if by the time the appeal reaches the House there is no longer a lis to be decided which will directly affect the rights and obligations of the parties inter se.

**[35]** It would appear that where there is no longer a dispute between the parties, the discretion to adjudicate an appeal is strictly limited to the area of public law.

**[36]** But even in the area of public law, according to Lord Slynn (*R v Secretary of State for the Home Department, ex p Salem* ), the discretion to hear disputes must:

> [B]e exercised with caution and appeals which are academic between the parties should not be heard unless there is a good reason in the public interest for doing so, as for example (but only by way of example) when a discrete point of statutory construction arises which does not involve detailed consideration of facts and where a large number of similar cases exist or are anticipated so that the issue will most likely need to be resolved in the near future.

**[37]** In these appeals, there is no issue involving 'a public authority as to a question of public law' or even a question of statutory construction, but a

dispute among the members of Zong Dong.

**[38]** In the light of what we have said, we allowed encls 9a and 7a and struck out the appeals and removed the matter from the cause list. So ordered.

*Order accordingly.*

Reported by Dzulqarnain Ab Fatar